IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5963 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JESUNGBHAI VAGHJIBHAI CHAUHAN

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 5963 of 2000

MS KUSUM M SHAH for Petitioner No. 1-2

MS MANISHA LOVKUMAR, AGP for Respondent No. 1-3

MR MH RATHOD for Respondent No. 4-12

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE K.R.VYAS

Date of decision: 10/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE K.R.VYAS)

1. Two petitioners have filed this public interest litigation challenging the order dated March 30,2000 passed by the Collector, Banaskantha resuming 40 Acres of land out of survey no. 74 of village Kotda, Taluka Dantiwada for the purpose of allotting the same to to rehabilitate families affected by Sipu Project. The said order is challenged inter alia on the ground that no resumption of gauchar land can be made for the said purpose and it would be detrimental to the interest of cattles. The petitioners have contended that they are agriculturists and are having cattles and, therefore, they have a right to graze their cattles in the gauchar land of village; before curtailing such right by resumption of land from gauchar, the Collector could have invited objections from the village people and having not done so, the impugned order is bad, illegal and against the principles of natural justice. It was also contended that all the persons affected by Sipu Project were given compensation as well as land in exchange and, therefore, the panchayat could not have passed resolution accepting proposal of the Deputy Collector, respondent no.2 to resume 40 Acres of land from gauchar. Finally, malafide are alleged against the Sarpanch of village panchayat to the effect that he joined hands with the respondent no.2, fixed up list of persons who are to be granted land out of resumed land under the guise of they being persons affected by Sipu Project and secretly fixed up sale of such land to outsiders and thereby earned a big chunk for himself at the cost of village people.

2. It may be stated that the petitioners filed the petition without joining the concerned panchayat as well as the affected persons in whose favour the allotment orders came to be passed. It appears that an application being Civil Application No. 5925 of 2000 came to be filed by nine persons for impleading them as parties by contending that they are the necessary and proper parties to the proceedings as the petitioners have suppressed material fact, namely that by order dated 20.4.2000, the Deputy Collector, Land Acquisition (Rehabilitation), Sipu Project, granted land to them as they are the affected persons by Sipu Project. Not only that, but they have paid up the amount of occupancy price to Talati-cum-mantri, Kotda and the actual possession of land was delivered to them on 16.5.2000 by Circle Officer, Sipu Project, Palanpur and necessary change is also effected in the revenue record. In Civil Application No. 5925 of 2000, the Division Bench of this Court passed an order on 18.7.2000 whereby the nine applicants were directed not to utilise the land till

further orders and the Collector was directed to file affidavit pointing out whether after taking into consideration, the number of cattles in the villages, he had passed the order or not. He was further directed to file a detailed affidavit.

3. Again on 6.12.2000, the Division Bench of this Court issued Rule in the main matter and continued interim relief granted earlier (no interim relief was granted in the main petition) by observing that it will be open for the respondents to move the Court for vacation of interim relief after serving notice at least 15 days in advance to the petitioners.

4. Those nine applicants in whose favour the allotment of land was made filed one more application being Civil Application No. 5350 of 2001 with a prayer to modify or vacate the order dated 18.7.200 and to permit them to utilise the land in question till the pendency and final disposal of Civil Application No. 5925 of 2000 and Special Civil Application No. 5963 of 2000.

5. On 25.6.2001, we allowed Civil Application No. 5925 of 2000 by granting permission to the applicants to be joined as party respondents in the main Special Civil Application. We also directed the Deputy Collector, respondent no.2 in the main petition to produce on record detailed affidavit pointing out full facts regarding the land in dispute.

6. The respondent no.2 Dipak B.Shah, Deputy Collector, Land Acquisition, Rehabilitation Department, Sipu Project, Palanpur filed an affidavit in the matter wherein he inter alia pointed out that by an order dated 30.3.2000, the land which was vested with the Government, the Collector, Banaskantha had resumed pasture land in pursuance of Resolution no. 4/1 passed by the Gram Panchayat. According to the deponent, 40 acres of land out of survey no. 74 was acquired for the purpose of allotting the same to the affected persons of Sipu Project. The deponent has given details about the survey numbers. From the said affidavit, it is clear that survey nos. 1,12, 62, 63,70, 72, 74 admeasuring 122 acres 27 gunthas are pasture lands. However, from survey no. 74, out of 70 acres 39 gunthas of land, only 40 acres of land is resumed under section 110 of the Gujarat Panchayats Act for rehabilitation of affected persons of Sipu Project. The deponent has stated that about 82 acres 27 gunthas of pasture land is still available in the village which can be utilised for grazing cattles.

An attempt was made by the learned Counsel for the petitioners Ms.K.M.Shah to point out that the pasture land now remained is too small and, therefore, no land which is a pasture land can be allotted at the detriment of cattles.

7. Subsection 4 of section 108 of the Gujarat Panchayats Act, 1993 empowers the Government to resume any open site or waste, vacant or grazing land vesting in Government and which has been vested by Government in a panchayat whether before or after the commencement of the Act, at any time such site or land if it is required by it for any public purpose. It is not in dispute that for rehabilitating the affected persons of Sipu Project, Government decided to resume land from the panchayat and, therefore, the purpose for which the land is required is certainly a public purpose. The panchayat unanimously passed a resolution dated 23.8.1999. A half hearted attempt was made by the petitioners to point out that some of the members who were present in the meeting have denied to have attended the meeting of the panchayat by filing affidavit. It is not possible for us to go into the said disputed questions. We have seen the xerox copy of the resolution as well as the list of members who were present with their thumb marks/ signatures. Once the panchayat has agreed to part with the pasture land for public purpose, it is reasonable to infer that the panchayat must have taken into consideration all the pros and cons in the matter regarding the need of grass for cattles. In the affidavit filed by respondent no.2, it has been pointed out that considering the strength of cattles in the village, there are sufficient pasture lands available in the village.

8. Division Bench of this Court in the case of Bhupatbhai Oghabhai Vs. State of Gujarat, 1996(1)GLR 600 has taken a view that resumption of gauchar land in the panchayat area by the Government for allotment to persons belonging to Scheduled Castes/ Scheduled Tribes and backward communities is a public purpose and the said purpose can be achieved by reducing the gauchar land. We are conscious of the fact that nothing can be done to the detriment of the interest of cattles because the existence of cattles is also equally essential for human beings. However, considering the resolution of the panchayat and the affidavit filed by respondent no.2, we have no manner of doubt in our mind that the proper interest of cattles is taken into consideration while allotting pasture land for rehabilitation of persons affected by Sipu Project.

9. It was contended that the resumption of pasture land is illegal and against the principles of natural justice as no hearing is given to the villagers. Supreme Court in the case of PVSSK Cooperative Society Ltd. Vs. Haribhai Mevabhai, AIR 1996 SC 2578 has ruled that when the waste land or open site or vacant land or grazing land vested in the State was sought to be resumed from gram panchayat by the Collector for any laudable public purpose, notice to villagers is not necessary. We, therefore, see no merits in this contention.

10. Our attention is invited to certain orders passed in favour of oustees allotting land to them. It was contended by the learned Counsel for the petitioners that as they were already allotted lands, no further allotment can be made from gauchar lands. Perusing the orders of allotment of lands, it appears that the land losers are given land of the same area as held by them. The learned AGP appearing for the State has stated that apart from the land of survey no.74, if some other land is provided to oustees, that will be adjusted while allotting land of survey no.74. In view of this, we reject this contention. In absence of any material produced on record, we hardly see any merit in the contention of malafide alleged in the petition against the Sarpanch of Gram Panchayat who is also not joined as a party respondent.

11. This petition in the name of public interest is filed without joining the affected persons and without joining even the panchayat which raises doubt about the credibility of the petitioners. It appears to us that the cause of the petitioners is not bonafide and, therefore also, this petition is required to be rejected.

12. In the result, petition fails and is dismissed with costs. Rule discharged. Ad-interim relief granted in Civil Application No.5925 of 2000 stands vacated.

(D.M.Dharmadhikari,CJ)

(K.R.Vyas,J.)

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